



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

*Superseded By
art 29-d N.C.S.*

Honorable Guy Turner
County Auditor
Denton County
Denton, Texas

Dear Sir:

Opinion No. 0-3578

Re: Under the facts set forth, should the county school superintendent be drawing his salary under Senate Bill No. 499, 45th Legislature? Is it the duty of the county auditor to pass on the question of the proper salary to be paid to the county school superintendent? Does the county auditor have any authority or supervision over funds belonging to common school districts?

Your request for our opinion on the hereinabove captioned questions has been received by this Department. We quote from your letter as follows:

"The County School Superintendent of Denton County, under S. B. No. 499 passed by the Forty-fifth Legislature, received a raise in salary. According to the last Federal Census our population is now above 32,830, therefore, I am of the opinion he should not be drawing the money allowed him under S. B. 499.

"After reading the case of Houston National Exchange Bank et al v. School District No. 25 Harris County, 195 S. W. 589 (Civ. App. 1916) I am wondering if it is my duty to pass on the matter.

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"Please advise if I have any authority or supervision of funds belonging to Common School Districts."

Senate Bill No. 499 (Acts 1937, 45th Legislature, p. 1276, Ch. 477), referred to in your letter, was carried forward in Vernon's Annotated Civil Statutes as Article 2700d-17. Section 1 of this Article provides in part as follows:

"Section 1. In all counties of the State of Texas having a population of not less than thirty-two thousand eight hundred (32,800) and not more than thirty-two thousand eight hundred thirty (32,830), . . . the salary of the County Superintendent of Public Instruction shall be not less than Two Thousand Seven Hundred Fifty (\$2,750.00) Dollars and not more than Three Thousand (\$3,000.00) Dollars per annum, the amount of which salary shall be fixed by the order of the County Board of Education for the respective counties, and the County Board of Education for each of the counties coming within this bill shall, by order entered in its minutes, set the salary for each of their respective counties."

The official 1940 Census report discloses that Denton County now has a population of 33,658, being, as stated in your letter, in excess of the 32,830 maximum within the hereinabove mentioned act.

You are, therefore, respectfully advised that it is the opinion of this Department, under the facts stated, that you are correct in your conclusion that the salary of the county school superintendent of Denton County is no longer to be determined from the provisions of Article 2700d-17 for the reason that said Article no longer applies to Denton County.

In the case of Houston National Exchange Bank v. School District No. 25, Harris County, 185 S. W. 589, the Galveston Court of Civil Appeals in 1916 held, that the county auditor was not authorized or required to approve vouchers drawn on funds of the common school district of the county. It was observed in this case that school funds are not funds "for the use of, or belonging to, the county," over which Article 1651, R. C. S. of 1925, prescribes the county auditor's duties, but

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that the same are State funds which are held by the county merely as trustee for the public free schools, and that such school funds are subject to the supervision of the school officers, such as trustees, superintendents, etc.

Under Article 2827a, Vernon's Annotated Civil Statutes, the salary of an elective county school superintendent is paid out of the State Available School Fund.

You are, therefore, respectfully advised that it is the opinion of this Department, under the facts stated, that since the salary of the county school superintendent of Denton County is paid out of school funds and not out of funds "for the use of, or belonging to, the county," the matter of passing on the amount of salary to which the superintendent is entitled is not part of the duties required of the county auditor of said county.

We are enclosing herewith copies of our opinions Nos. 0-1063, 0-2734 and 0-2734a, heretofore rendered by the present administration of this Department, which, we believe, will fully answer your last question.

Very truly yours

ATTORNEY GENERAL OF TEXAS

By

Edgar Pfeil
Edgar Pfeil
Assistant

KP:N

APPROVED JUN 23, 1941.

Glenn R. Lewis

Acting

ATTORNEY GENERAL OF TEXAS

